

MONTANA BOARD OF HORSE RACING MEETING

1:00 P.M., March 3rd, 2009

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HELENA, MT

Approved Minutes

ATTENDANCE:

Al Carruthers	Chairman	Sue Austin	Board Member
Topper Tracy	Vice Chairman	John Ostlund	Board Member
Susan Egbert	Board Member	Mike Tatsey	Board Member
Ryan Sherman	Executive Secretary	Sherry Meador	Legal Counsel

PUBLIC IN ATTENDANCE: Cindy Johnson, Tom Williams, Paul Pryor, Ben Carlson, Tom Tucker, Mike Meloy, Merritt Pride, Jack Cano, Barbara Pride, Lou Wojciechowski, Keith Johnston, Edward Spector, Eric Spector, Marvin Krone, Don Scoffield, Lisa Bracco, Bill Ogg, Randy Rasmussen, Dale Hillyard, R.C. Forster, Kim Mower, Ron Thibert, Randy Laedeke, Bob Utick, Tony Hernandez, Mary Morten, Bryan Krone, Maxine Carruthers, Bill Weatherwax, Val Crossland, Leonard Rogers, Jeff Jones, Randy Hedegaard, Don Benston, Debbie Cunningham, Janis Schoepf, Somner Strain, Dave Strain.

CALLED TO ORDER: Chairman Carruthers called the meeting to order at 1:00pm

MINUTES: Member Austin moved to approve the January 10<sup>th</sup> minutes. Member Ostlund seconded the motion. Motion passed.

NEW BUSINESS: Oral arguments on Proposed Findings of Fact and Conclusions of Law for 2009 Simulcast License Applications.

Chairman Carruthers asked Sherry Meador to read a statement of governing rules and the process for addressing conflicting simulcast license applications. The administrative rules governing the Board of Horseracing state that when there are two or more simulcast applications for the same date in the same counties, a hearing must be held in accordance Montana's Administrative Procedures Act.

We have two applicants who have paid their application fees and have requested all the dates in all the counties for 2009. Information was requested, a hearing was held, responses were received and considered for both parties, and the hearing officer made recommended findings of fact and conclusions of law to the Board. Now, the parties have an opportunity to respond to the recommended conclusions, submit additional testimony, and answer questions from the Board. The Board may also seek comments and questions from the public. All written and spoken testimony will be made part of the record.

After considering all testimony presented, the Board will then accept, reject, or amend the recommended conclusions and award all, part, or none of the simulcast dates requested based on, but not limited to, the following criteria:

- (a) interest of the state;
- (b) the best interest of live racing facilities within the state;
- (c) the best interest of the simulcast facility owner;
- (d) simulcast facilities;
- (e) geography and location;
- (f) experience, skill and integrity in management;
- (g) financial stability of applicant;
- (h) opportunity for the sport of horse racing to develop;
- (i) hardship that may be caused by awarding overlapping simulcast race dates;
- (j) extent of community support for the promotion and continuance of simulcast race meets or simulcast race dates;
- (k) character and reputation of the individuals identifies with the undertaking; and,
- (l) tenure of simulcast race meets being considered.

Under the Board's governing rules, no party has a vested right to race dates, and no single criterion is compelling or binding on the board. Either party who is adversely affected by the Board's decision has 30 days to file an appeal with the District Court if they want the decision reviewed.

**Parties were Introduced.**

Montana Simulcast Partners, represented by Tom Tucker  
Montana Entertainment, represented by Eric Spector

**Conclusion/Recommendations of the Hearing Examiner was read.**

"After review of the entire record and of the testimony presented at the hearing, it is the conclusion of the hearing officer/examiner that Montana Entertainment offers the State of Montana the best chance to revitalize the sport of horse racing in Montana. The current licensee, Montana Simulcast Partners, has not accomplished the revitalization of an active horse racing industry in Montana. Montana Entertainment, on the other hand, proposes new and innovative ways to conduct simulcast racing which are designed to bring persons to simulcast wagering across the State. As Montana Entertainment indicated in its presentation, MSP's methods do not seem to be working to bring horse racing back to Montana. It is the recommendation of the Hearing Examiner that the Board grant to Montana Entertainment an exclusive license to conduct simulcast horse racing in Montana for the year 2009."

**Oral Arguments:**

**Montana simulcast Partners' Opening Statement**

Montana Simulcast Partners, as the adversely affected party, spoke first. MSP's representative, Peter Meloy from Meloy Law Firm, discussed history of tracks and initial simulcast legislation. Mr. Meloy disagreed with hearing officer that MSP is not the reason of the decrease in live

rating but has been the savior. He stated that should not take an operation that is Montana based and give an exclusive license to someone from out-of-state. Would have to double handle to keep Montana even with MSP. MSP is willing to compete head-on with ME and give ME a chance to show what they can do. Wait till next year and see if the criticism that ME has levied against MSP is realized and review the license applications earlier. The objections to hearing examiner's proposed findings was emailed to Board and to ME.

#### **Board questions:**

Member Tatsey asked MSP when they normally apply for license. Tucker said Sam Murfitt used to send applications out 12/1 and would be calling by mid-January to confirm applications have been sent. January 1 started the licensing period. Member Egbert asked about whether the sites are currently licensed. Tucker said the applications have been submitted and the checks cashed. He was concerned that if MSP doesn't get this license, then the sites will be liable to anyone who placed a bet as of Jan. 1. Chairman Carruthers asked Sherry Meador to clarify legal status of current licensees. Meador stated that the rules provide that the board needs to respond to applications within 30 days, applications are available to everyone online, and the applications are for specific dates. The sites are appropriately licensed for the dates that have passed. This hearing is in regard to upcoming dates. MSP's contract with the sites is clearly one of the criteria to be considered. The rules state that the applications are submitted only after a check has been received and the State requires that all checks be cashed within 10 days. A hearing is held when two applications have been submitted with conflicting dates which is what we have now.

Member Tatsey commented that he didn't remember ever approving a simulcast license before and wondered why MSP continued to get a license when it never came before the board. Tucker said he just filed applications before January 1 and Murfitt would say okay or not. Tucker said a few other companies were interested but no one got down to the application process.

Member Egbert asked Tucker if MSP is audited and wondered if the Board was supposed to review that audit. Tucker said MSP is audited by Dick Peterson and Associates. Chairman Carruthers said HBPA audits them. Tucker said MSP is required to send in the weekly checks from simulcasting along with the details from every site and every tote person that logged on the terminals so that the Board can verify that those tote people are also licensed.

Member Austin asked if there was anything MSP could do differently to improve the handle. Tucker said they went to an Internet based system that cost \$30,000 but will provide savings. We have every one of the simulcast sites can get the program, tip sheets and result sheets and get alert messages sent out. Want to have printing module right next to tote system so sites don't have to spend a lot of time writing off programs in advance. Make more of an effort to give more detailed chart information to the bettor to draw a bettor back down to the sites away from the ADW at home. MSP will advertise more, \$20,000-30,000 set aside to do more advertising. Problem is that MSP is a non-profit organization and believed they needed to

maximize as much profit as they can for purses since there was no EPP money coming down. MSP works with the sites to say there are things they can do better and do that, and to bring up some more sites by using the smaller dish format instead of the two big satellites that many bars don't want. With the smaller dish, MSP can bring up 4 to 5 new sites this summer and into the Fall. Folks in Sydney would love to see a site up there. This Fall, the smoking restrictions are going to make a lot of businesses looking for something else to bring in new business.

#### **Montana Entertainment's Opening Statement:**

Eric Spector said they will look at facilities to see what they can do to attract the patrons, what other options are available, and how to retain the patrons. ME wants to maintain consistency between sites. ME believes the lifeblood of the sport rests in the simulcast facilities which is something happening in more states than just Montana. Simulcast puts money in the purse accounts. Looks to see if facilities have the amenities required. Are the right signals being provided. Detailed analysis on each site. Can signals be obtained at a preferred price? ME rate structures are a point average less than what MSP is able to get. ME controls other racing facilities and are able to obtain cost efficiencies. We don't wait for someone to come to be a simulcast participant but look for facilities and are in good places to open. ME is hobbled by the way that it operates, we have a model that is very different than MSP. We plan to standardize the simulcast facilities so that we're directing people through advertising and marketing to go to this logo and facility to find these things. We intend to tie these facilities and logo to the live race meets in the state. ME's method is different in that it is more hands on. Transitioning the license from MSP to ME would be fairly easy. ME would honor the rate structure MSP has made available. ME utilizes the same tote company as MSP. ME has a relationship with the owner of United Tote and they've indicated that they are ready to transition if the dates are awarded. ME went in to Wyoming as "carpet baggers" and currently own the race track, investing over 13 million dollars in live racing. Own and operate the OTB facilities investing another 4-5 million dollars. Employ 450 people statewide and are headquartered in Evanston. ME plans to be headquartered in Montana as well and is currently in negotiations to run a live race meet in Montana. ME isn't waiting around for individual sites to come up with the money but is prepared to make the investments in the simulcast sites.

#### **Questions by the Board:**

Member Tracy asked ME if they currently have any contract with a live racing facility in Montana. ME stated that until it has been granted a license, it isn't in a position to interfere with the dates that have already been applied for or interrupt anything MSP has agreed to do in support of the dates applied for. ME is in active discussions with a live racing facility but does not have a current contract.

Member Egbert asked if ME's employees in Wyoming were from within state. ME said that 200 are temporary employees for the live race meet. The remaining are permanent residents of Wyoming employed in the off-season at the OTB's and administrative group. Three or four of the administrative group are residents of Carlsbad.

Member Tracy asked why ME wants to come to Montana. ME responded that Montana is an opportunity they see as part of a larger strategy. We've invested in Wyoming and the states are largely integrated. Stabilizing Montana and making it worthy of a livelihood would benefit Montana and Wyoming. Member Tracy asked about conflicting race dates between Wyoming and Montana. ME said the dates may need to be changed so the horsemen could go from one to the other, though they would need to fit within the footprint Great Falls has for their fair. Chairman Carruthers asks ME if they're interested in any of these places. The Board's main interest is live racing. ME states clearly they are. ME believes they need to stabilize simulcasting to develop sufficient purses to provide a livelihood for the horsemen. ME will also look at the tracks to see what is needed but is wary of a piecemeal approach. Need long-term solutions. Member Tracy asked what will happen in two or three years if things don't work out in Montana. ME said then we'd be back in the position we found ourselves. ME stated it doesn't believe it could be in a worse position. Member Tracy agreed. ME's goal is to use the current year as a benchmark year and outperform this year and get the simulcasting stabilized as the first order of business. Second order of business is the live race meets and their operations. If there is only one facility in the state then we're not taking the product of live racing to enough people to be a viable industry. Too many competing gaming activities to interest locals if there isn't a track nearby. Current simulcast income of \$80 to 100,000 isn't sufficient to support 21 days of racing. In two or three years from now, and we get the public's interest, the industry will be back on its feet. Member Tracy asked a representative from Great Falls if they are willing to contract with ME to run the track this year. The Great Falls Fair Manager said the Commissioners are considering a contract and are waiting on a proposal from ME. The Great Falls Manager said they are going ahead with the 9 days they've applied for, and with whatever ME comes back with, and with what the Commissioners decide from there. Member Tracy asked, if the Board makes a decision today to give ME whole program and Commissioner doesn't give the contract to ME, what are you going to do? Great Falls didn't have an answer. ME said what they've been negotiation with Great Falls is the level of investment to the upgrade up the facility and the promotion for racing and the fair but it's not relevant to this discussion now. ME reiterated that it will make investments to the simulcast system with an eye toward the live race meets, and the first track they are interested in is Great Falls.

Chairman Carruthers asked Ben if Yellowstone was going to run the days he applied for. Ben said he didn't know. ME said that if the folks at Yellowstone were unprepared or just didn't want to run a race meet, ME would step in and run it. Member Egbert asked ME about Wyoming race purses. ME said they had \$2000 bottoms. ME saw it as an investment to bring horses back into the region. Wyoming Down's handle is around \$100,000 per day. They've had a lot of success in Wyoming not just because there's less competing gambling but because there's been a lot of promotion dedicated to the race meets. Member Tracy asked what was the off-track handle. This last year, ME hit around 10.9 million across 4 facilities. Member Tatsey asked what ME's projections are to what they bring to the horsemen. ME believes the

simulcast network is underserved in a number of areas in the state and opening new facilities can be done more cost effectively, and in a more organized way.

Member Egbert asked how ME would expect to develop relationships with sites that have had long term relationships with MSP. ME said that if the site's interest is in increased food and beverage sales, then they would most likely be willing to work with ME. ME would concentrate significant promotional efforts on statewide branding of facilities to attract more patrons, and for that reason, ME would not be interested in receiving a license for only part of the state as MSP has suggested.

Member Tatsey asked ME if they had any experience working with tribes. ME has worked with tribes in other states and have been able to work within the compacts available in the States to provide simulcast signals to tribes. Member Tatsey asked about the 12000 population base. ME stated that they used that population base not as a minimum but for those areas where they believe a simulcast site should definitely be placed. Tribal lands often include destination resorts that would be a good place for a simulcast site even though the population is smaller.

Ryan Sherman asked ME if they were willing to be licensed for only half the state, as MSP suggested. ME said that their emphasis on branding would require a level of investment that not be in ME's best interest if they were investing in not just the slot machines but another simulcast network. Member Tracy asked if ME has contacted the simulcast facilities in the state. ME stated that since those facilities are under contract with MSP, ME believed it wouldn't be fair to contact them before a license was granted. ME's intent is to go in and partner with the facilities or to purchase them outright – whatever is needed to get things moving quickly.

#### **Public Comment/Questions:**

Chairman Carruthers read the open forum statement to the public and announced a five minute break. After break ended, Chairman Carruthers opened the meeting for questions to the public that were to be addressed to the Board.

A trainer commented on going to Wyoming for racing and said it was a very well run race meet, but came back to Montana for family reasons. Everyone should look at what options were offered and whether we want to move forward or stay with the same program that has been moving backwards.

ME responded to question of how many dates they'll apply for. ME said it will depend on the purse structure and how much is available to run races. ME is working with other tracks in Wyoming to increase the races available. The natural circuit would be from Wyoming to Great Falls to Billings. Simulcast and racing go hand in hand.

Western Montana racing is an interest of ME. ME's management team includes 4 owners/operators of race tracks in Wyoming and Colorado. ME wants to only take tracks that

they are able to handle. ME is looking at Great Falls and Missoula because they start with looking at the physical property . ME sees it's obligation statutorily as one thing but it's investment in the property will be approximately \$600,000 for improvements in the physical facilities (roofing, back fill, barn, etc.).

Question of whether ME would be interested in splitting the simulcast sites – western end vs. eastern end of state. ME responded that the amount of investment and resources necessary to make simulcast work in one area would unfairly benefit the other network who hasn't made the necessary investments, operations of one network could impact the other network and cause undo liability, a statewide effort is necessary to obtain the cost efficiencies ME is suggesting. ME would not be interested in a simulcast license for only part of the State.

Question about race days in Great Falls. Board noted that since the contract with Great Falls is not signed, the number of days in Great Falls is still up in the air.

#### **MSP's Closing Statements:**

Mr. Meloy emphasized that MSP's exceptions to the hearing officer's findings are provided in writing. Chairman Carruthers noted that the exceptions were give to each Board member. Mr. Meloy then stated that Wyoming and Montana are very different. Montana has more competition for the betting dollar than any other state. Wyoming has no competition so you can't compare. Wyoming also has a powerful economic base from the gas and oil that gives them more money to play with. Montana doesn't have that economic base. Mr. Meloy was concerned that ME stated they didn't "fault" MSP but then their whole premise was that the failure of horseracing was MSP's fault. Could understand Board's interest in going with a big money company , but the fact is there is no evidence in the record that ME is able to do that. The return ME will get is from the percentage that MSP is currently giving to the tracks. \$6 million is the actually benchmark. ME has to improve the handle from 6 mil to 12 mil to break even because he's taking a profit. The Board is relying too much on ME's good will when ME's not willing to tell the plan or the negotiations with Missoula and Kalispell about doing a live meet. MSP will tell you they're willing to accomplish the same thing. If the license is taken away, MSP will go away, and if ME decides it can't make a profit, it will leave, and Montana is out of luck. MSP is a known quantity. Go with MSP at least for this year.

Chairman Carruthers asked the Board if there were any more questions. There were none.

#### **ME's Closing Statements:**

ME said they appreciated the opportunity to speak. ME is on the record for what it has promised. There are other tracks that they've successfully run. ME faced equally challenging circumstances in Wyoming with competing gaming opportunities as well and they were able to find ways to compete successfully with racing. Investments are required with promotional and advertising/marketing activities that won't be a cure but will certainly help stabilize the industry.

We have a team of people who have been in the industry 25-30 years. MSP has served its time for over 17 years and it's time to have a new approach.

### **Questions by the Board**

Member Tracy asked the public how many would like to see MSP run simulcast and how many would like to see ME run simulcast

Horseman from Great Falls still questioned what was going to happen in Great Falls and emphasized the need for the track to open to train. Chairman Carruthers clarified that the Commission hasn't made a commitment until the board decides.

Member Egbert asked Bill Ogg if he can say anything about what is happening in Great Falls. Mr. Ogg couldn't commit to anything. The new fair manager said they are going on with their plans to run racing pending any decision by the Commission on a contract with ME.

Kalispell representatives announced that the Kalispell track is available for training.

### **Board Deliberations**

Board took time to review MSP's written exceptions

Member Tatsey expressed how hard the decision was. It seemed to be all about marketing and ME's abilities to do so, but still struggling with presentation was basically a promise from ME and the statistics presented could be based on many different factors. Would have been more comfortable if he knew what ME would actually bring to the board. He is aware of what MSP brings to the board.

Member Tracy questioned whether ME would come in with all the money it said it would and do the things they say. Can't give an explanation of how long they'll race in Great Falls, how long Billings will race, or if Missoula is going to come back. Many commissioners in Montana would just as soon not see horse racing come back. No one will make up their mind. Horsemen are left out in the cold. Horsemen need to start training the first of February. Wants to know for sure where ME will be in two years. Would like to see ME say they'll run this year the way it is but come back in October and set up a plan.

Member Egbert said she was concerned about MSP's report in October that it didn't know how long it would last. Would MSP be able to last if Great Falls goes down. MSP, Tucker, said the letter from October was given because he was unable to attend. Tucker said he was mainly saying they had some major holes that need to be plugged – meaning ADW, which he's lost major players to and which he was able to open up an account with Twin Spires but no money back to Montana. Says Board hasn't done anything for a year and needs to stop that flow of money out of the State. Tucker said he addressed the board later and said MSP will be fine, he'll make up out of his own pocket. He's got another \$100,000 sitting in the bank that can help.



MSP is a non-profit and will try to make the changes it can while giving money back to the tracks. Member Egbert said ME is still an unknown and wonders what the Board can count on. ME said Talked about investments made in Tioga Park and Vernon Downs, how successful they've been even though they have . ME's commitment to Montana is based on many factors, the purses available are too small to have many race dates right now since the simulcast handle has decreased over the past 3 years. ME's commitment is to invest their own money in hardware and equipment at existing simulcast facilities, will obtain the signals patrons want to watch, ME's employees will operate the facilities from a hands-on point of view to assist the sites, standardized approach – websites, logos, branding, advertising and marketing which is not what you've seen from MSP. Look at our investments in Wyoming and New York. Recruiting more patrons, getting a better line of play to increase handle which will increase purses. Chairman Carruthers said that he's seen racing go down over many years and if that's the way we want to go, we'll keep going the same route. MSP said they'll try to do better but we need live racing now. The board needs to make up its mind which way it wants to go.

Member Ostlund commented that he thought there were wonderful men in both groups. He wanted to point out that Tucker has done a lot for horse racing in this state. He was concerned that ME's proposal came in February instead of prior to the end of the year. ME said they've been asking about applying for a simulcast license but was told over the years that there was a licensing procedure that was never made available to them until this year. Believed they were being discouraged from applying until now. Meador added that rules state simulcast license can be applied for at any time. Member Tracy said the different programs (simulcast, fantasy sports, ADW, Breeder's Association, HBPA) should all come together and be sure the Board knows what's going on. Public comment was that the tracks need to do a better job of keeping the Board and public informed of what they're doing as well – what they need money for.

Member Tatsey moved that the Board grant ME a simulcast license for 2009. Member Austin seconded. Members Tatsey, Austin, Egbert, and Tracy voted in favor of the motion. Member Ostlund voted against the motion. Motion passed.

**Senate Bill 493:**

Chairman Carruthers next asked the board for their support of Senate Bill 493, a measure aimed at allocating a percentage of any tax increase from year to year on gambling machines, to the Montana racing industry. Board Member Egbert made a motion to support SB 493 and give executive secretary Ryan Sherman the ability to speak on behalf of the board. Member Tracy seconded the motion. Motion Passed.

**Public Comment:**

Chairman Carruthers next opened the meeting to public comment to which no additional public comments were made.

**Adjournment:**

Board Member Austin moved to adjourn meeting. Member Tatsey seconded. Motion passed.

The meeting was adjourned at 4:15pm.

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Signature

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Date